



# **SALES CONTRACT**

**B E T W E E N**

**SHELL OIL COMPANY**

**A N D**

**KAISER GYPSUM COMPANY**

**DATED JULY 11, 1955**

# FUEL OIL CONSUMER SALES CONTRACT

No. \_\_\_\_\_

THIS CONTRACT, dated July 11, 1955, between SHELL OIL COMPANY, a Delaware corporation with a Division Office at 100 Bush Street in San Francisco, Calif. (herein called "Shell"), and Kaiser Gypsum Company, with offices at 385 Grand Avenue in Oakland, California (herein called "Buyer"),

WITNESSETH:

1. **PRODUCTS.** Shell shall sell and deliver to Buyer, and Buyer shall purchase and receive from Shell, on the terms and conditions herein provided, the respective "Shell" products for which minimum and maximum quantities are specified in the following schedule (in gallons unless otherwise specified):

"SHELL" PRODUCT	QUANTITIES		"SHELL" PRODUCT	QUANTITIES	
	MINIMUM	MAXIMUM		MINIMUM	MAXIMUM
Kerosene	_____	_____	No. 4 Fuel Oil	_____	_____
Prime White Distillate	_____	_____	Light Fuel Oil	_____	_____
Stove Oil	_____	_____	No. 5 Fuel Oil	_____	_____
Furnace Oil	_____	_____	Medium Fuel Oil	_____	_____
"DIESELINE"	_____	_____	No. 6 Fuel Oil	_____	_____
Premium "DIESELINE"	_____	_____	Industrial Fuel Oil	<u>40,000 bbls.</u>	<u>80,000 bbls.</u>
(For information only, Shell's posted ex wharf price for Shell					
Industrial Fuel Oil (PS-400) at Seattle, Washington as of					
July 11, 1955 is \$2.10 per barrel					

Shell may, at its option from time to time, sell and deliver to Buyer such "Shell" products other than those for which quantities are specified as Buyer may desire to purchase and receive from Shell; and any such sales and purchases shall be on the terms and conditions herein provided, unless otherwise agreed in writing.

2. **QUANTITIES.** The quantities of each product shall be such as Buyer shall order from time to time during the continuance of this Contract, but not less nor more (except at Shell's option), during any contract-year, than the respective minimum and maximum quantities thereof specified in the schedule, nor more (except at Shell's option) than 20% of such maximum quantity, during any one calendar month.

3. **PRICES.** The price ~~per gallon~~ ~~per barrel~~ per barrel, if quantities are specified in barrels), f.o.b. Seller's wharf, Seattle Washington, for each product shall be Shell's posted ~~tank car~~ ~~ex wharf~~ ~~contract~~ ~~consumer~~ price /less a discount of \$0.125 ~~negotiation~~ ~~per barrel~~, f.o.b. Seattle, Washington

Division Office hereinbefore specified or at such other place as Shell may designate by notice to Buyer. If the prices are specified herein as f.o.b. destination, and Shell ships any product freight collect (as Shell may do), Buyer shall pay the freight, but Shell shall credit the amount thereof on the price of such product. If the prices are specified herein as f.o.b. any point other than destination, and Shell ships to buyer from any point other than the f.o.b. point (as Shell may do), Shell may also, and without regard to the means of transportation, add to the price of the product shipped an amount equal to rail freight from the f.o.b. point to destination, and deduct therefrom an amount equal to rail freight from the shipping point to destination.

4. **TERMS.** Terms of payment shall be cash on delivery or such credit terms as may be extended by Shell, which may be altered or revoked by Shell at any time.

5. **DELIVERIES.** Shell shall not be obligated to make any delivery: (a) at or for shipment to any destination(s) other than the following: Kaiser Gypsum Company Plant, Seattle, Washington; or (b) in any quantity of any product less than a full tank car or transport truck or truck-and-trailer quantity; or (c) unless Buyer has furnished Shell, at its Division Office hereinbefore specified or at such other place as Shell may designate by notice to Buyer, written shipping instructions at least five (5) days before the date on which Buyer desires delivery to be made. Shell may deliver any product by any means of transportation, in any containers and from any shipping point that Shell may select. The quantity of any product delivered shall be the quantity loaded into the delivery equipment at shipping point, adjusted to an equivalent volume at a temperature of 60° F.

6. **PERIOD.** This Contract shall be in effect for the period beginning on July 1, 1955, and ending on June 30, 1956. Whenever used herein "contract-year" means any year beginning on the beginning date of the period of this Contract or any anniversary thereof and ending on the next succeeding anniversary thereof. For any balance of the period of this Contract which is less than a contract-year, the minimum and maximum quantities shall be the appropriate pro-rata portions of those specified in the schedule.

7. **RESALE.** Buyer represents that the products purchased hereunder are for Buyer's own consumption and will not be sold or offered for sale by Buyer; and if any of such products are sold or offered for sale by Buyer, Shell shall have the right to suspend deliveries hereunder or to terminate this Contract by notice to Buyer.

A. **TAXES:** Any tax, duty, charge or fee, now or hereafter levied on the products sold hereunder, or on the raw or processed products from which the products sold hereunder are manufactured or blended, or on Shell, or required to be paid or collected by Shell, by reason of the production, manufacture, blending, inspection, storage, withdrawal, sale, distribution, transportation, delivery or use of said products, or any feature thereof, shall be paid by Buyer, in addition to the prices specified herein, insofar as the same is not expressly included in such prices.

B. **CLAIMS:** Shell shall have no liability to Buyer for any defect in quality or shortage in quantity of products delivered hereunder, unless: (1) Buyer gives Shell notice of Buyer's claim within forty-eight (48) hours after arrival at destination of delivery of the products in question, or in case of any latent defect in quality, within forty-eight (48) hours after Buyer's discovery of such defect; (2) Shell is given a reasonable opportunity to inspect such products; and (3) in case of delivery by tank car or vessel, the claim, if for anything other than latent defect in quality, is allowed by Shell before the product is unloaded from the tank car or vessel. Shell shall have no liability for any defect or shortage of any products delivered in tank cars, vessels, trucks, or other containers furnished by Buyer. Shell shall have no liability to Buyer for any other claim, and Buyer shall have no liability to Shell for any claim (except for indebtedness or relating to equipment), arising directly or indirectly out of or in connection with this Contract or any sales or deliveries of petroleum products by Shell to Buyer hereunder, unless the claimant gives the other party notice of the claim within ninety (90) days after the date of the sale, delivery or other transaction or occurrence giving rise to the claim. Every notice of claim shall set forth fully the facts on which the claim is based.

C. **ASSIGNABILITY:** Neither this Contract nor any claim against Shell arising directly or indirectly out of or in connection with this Contract shall be assignable by Buyer or by operation of law, except with the written consent of Shell.

D. **ENTIRETY-RELEASE-EXECUTION:** This Contract comprises the entire agreement between Shell and Buyer, and there are no agreements, understandings, conditions, warranties or representations, oral or written, express or implied, concerning the subject matter or in consideration hereof, that are not merged herein or superseded hereby. All prior contracts between Shell and Buyer concerning the subject matter hereof are hereby terminated as of the beginning date of the period hereof; and Shell and Buyer hereby release each other from all claims which each now has against the other, whether or not now known to either, arising directly or indirectly out of or in connection with any such prior contract or any sales or deliveries of petroleum products by Shell to Buyer thereunder, prior to said beginning date, excepting, however, claims of Shell against Buyer for indebtedness or relating to equipment. Neither this Contract nor any subsequent agreement amending or supplementing this Contract shall be binding on Shell unless and until it has been signed in Shell's behalf by a representative duly authorized by its Board of Directors; and commencement of performance hereunder or under any such subsequent agreement shall not constitute a waiver of this requirement.

ARTICLES E TO I, INCLUSIVE, APPEARING ON THE REVERSE SIDE OF THIS SHEET, ARE HEREBY INCORPORATED IN AND MADE PART OF THIS CONTRACT.

IN WITNESS WHEREOF, this Contract is executed as of the date first herein written.

Witness to execution by Shell:

SHELL OIL COMPANY

By

C. B. MacGlashan

MANAGER, FUEL OIL DEPARTMENT

(Title of officer or agent)

"SHELL"

Witness to execution by Buyer:

Kaiser Gypsum Company, Inc.

By

Vice President and General Manager

(Title of officer or agent)

"BUYER"